

HOUSE BILL 1984
By Lynn

AN ACT to amend Tennessee Code Annotated, Title 2;
Title 3 and Title 4, relative to ethics

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 3, Chapter 3, is amended by adding Sections 2 through 10 of this act as a new part.

SECTION 2. There is hereby established the Legislative Ethics Commission, also referred to in this act as the "LEC" or "Commission".

SECTION 3.

(a) The LEC shall consist of nine (9) members, who shall be selected as follows:

(1) One (1) member appointed jointly by the speaker of the senate and the senate minority leader;

(2) One (1) member appointed jointly by the speaker of the house of representatives and the house minority leader;

(3) Two (2) members appointed by the supreme court;

(4) Two (2) members appointed by the governor;

(5) One (1) member appointed by the registry of election finance;

(6) Within thirty (30) days of the composition of the members appointed as above, the appointed members shall select an additional two (2) members who shall be promptly appointed.

(b) Anytime within forty-five (45) days of certification, a commissioner may be decertified by a majority vote of both houses of the legislature, if the legislature is in session, or by a two-thirds (2/3) vote of the members of the joint legislative services

committee if the legislature is not in session. If decertified, the commissioner is disqualified and a replacement must be appointed to fill the vacancy.

(c) No commissioner or LEC employee shall be a legislator, a legislative employee, an elected or appointed public official (including the commissioner of another governmental body), an officer of any political party, or a candidate for public office.

(d) Commissioners shall serve staggered terms of five (5) years. However, the initial commissioners shall serve the following terms:

(1) The members appointed by the senate and the house and one (1) commission appointed member shall serve a term of five (5) years;

(2) The members appointed by the governor and one (1) commission appointed member shall serve a term of four (4) years;

(3) The member appointed by the registry of election finance shall serve a term of three (3) years; and

(4) The members appointed by the supreme court shall serve a term of two (2) years.

(e) No commissioner shall serve for more than ten (10) consecutive years, except that a commissioner shall continue in office until a successor has been appointed.

(f) A vacancy for the remainder of an unexpired term shall be filled within thirty (30) days of the occurrence of the vacancy in the same manner as an original appointment.

(g) At its first meeting, the LEC shall elect a chair and a vice chair, each to serve for a two (2) year term with a limit of two (2) consecutive terms. The vice chair shall act as chair in the absence of the chair or in the event of a vacancy in the chairmanship.

(h) The LEC may hire legal counsel and any other staff as determined by the LEC to aid it in performing its duties.

(i) The LEC may employ the services of such technical, professional and clerical services experts and consultants as are necessary to carry out its duties. The LEC may also contract for services which cannot be satisfactorily performed by its employees, including legal counsel.

(j) A commissioner may be removed from office by a vote of two-thirds (2/3) of both houses of the legislature for good cause, including substantial neglect of duty, inability to discharge the powers and duties of office, gross misconduct or conviction of a felony.

(k) Commissioners shall not receive any compensation for their services but shall be entitled receive reimbursement for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general.

(l)

(1) No commissioner or LEC employee shall:

(A) participate in political management or in a political campaign during the member or employee's term of office or employment;

(B) participate in the campaign of, attend campaign fund raising events for, or make a financial contribution to:

(i) a candidate for the legislature,

(ii) any current legislator or legislative employee who is a candidate for any other office, or

(iii) any person running against a present legislator or legislative employee; or

(C) be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist; or

(D) take any action or make any statement which is likely to create in the mind of a reasonable, objective observer a belief that the commissioner or LEC employee is not impartial or independent or is otherwise unable to properly perform public duties.

(2) Violations or alleged violations of this provision shall be treated as violations of any other provision of this act and shall be dealt with by the LEC accordingly. During the pendency of any complaint against a commissioner or LEC employee, the commissioner or employee shall not participate in any official actions of the LEC.

SECTION 4.

(a) The LEC shall meet at the call of the chair or a majority of commissioners, but in no event less than once every six (6) months.

(b) A quorum of the LEC shall consist of five (5) commissioners.

(c) A vote of the majority of commissioners present at a meeting in which a quorum is present shall be required for any action in which a vote is required.

SECTION 5. The LEC shall have the following powers and duties:

(1) investigate and adjudicate complaints and recommend disciplinary actions to the legislature;

(2) authorize research in the field of legislative ethics;

(3) prepare and distribute an ethics manual to legislators, legislative employees and lobbyists; and

(4) prepare a bi-annual report to the legislature summarizing its activities over the previous two (2) years and recommending legislative reforms it thinks necessary.

SECTION 6.

(a) The filing of a complaint shall be the first step in the investigatory and adjudication process. It is the purpose of this act to assure that complaints should provide sufficient information on which to proceed, yet not be so complex or burdensome that the requirements unduly discourage or screen out valid good faith complaints.

(b) The LEC shall develop a mechanism for filing complaints and performing an investigation based on such complaints. Such mechanism shall be promulgated as a rule in accordance with the Uniform Administrative Procedures Act, title 4, chapter 5.

SECTION 7.

(a) Investigation into ethics charges shall be undertaken in a manner which assures the public of an impartial and comprehensive review, is fair to the respondent and which elicits the information the LEC needs to make a decision.

(b) Before commencing an investigation, the LEC shall adopt a written resolution defining the scope of the investigation, a copy of which shall be supplied to both the complainant and the respondent.

(c) A legislator or a legislative employee may request in writing that the LEC investigate charges of impropriety made against the legislator or legislative employee.

SECTION 8.

(a) A formal hearing on ethics charges against a legislator or legislative employee shall be conducted in a manner that inspires confidence in the integrity and objectivity of the process and demonstrates full consideration for the rights and reputation of the respondent.

(b) Any such hearing shall be held as a contested case hearing in accordance with the requirements of the Uniform Administrative Procedures act, title 4, chapter 5.

SECTION 9.

(a) Within ten (10) days of the completion of hearings, the commission shall vote on each charge to determine whether it was established by a preponderance of the evidence and prepare a written opinion along with recommendations, if any. A vote of three (3) commissioners is necessary to find a violation.

(1) As to each charge on which the evidence was found to be insufficient to establish a violation, the commission shall issue a written opinion stating its findings.

(A) If the commission finds that the charges were frivolous, malicious, made in bad faith or that, in its opinion the respondent should be exonerated of the charges (found to be innocent), it shall so state in its opinion.

(B) If the board finds that the respondent should be exonerated, it shall recommend that the legislature reimburse the respondent for all or part of reasonable legal fees incurred as a result of the charge. Unless the commission makes such a recommendation, however, such fees shall not be paid from public funds.

(2) As to each charge on which the evidence was found to be sufficient to establish a violation, the commission shall issue a written opinion stating their findings of fact and law along with recommendations as to appropriate sanctions. The recommendations may include, but shall not be limited to:

(A) Civil penalties of not more than five thousand dollars (\$5,000) for each offense, or equal to twice the amount improperly gained by the misconduct, whichever is greater;

(B) Detailed disclosure, with or without additional periodic reporting requirements;

(C) Suspension from legislative service, if a legislative employee, with or without pay;

(D) Restitution or reimbursement;

(E) Written reprimand;

(F) Censure (a legislator censured shall not serve as a chair or a co-chair on any legislative committee for the remainder of the legislator's pending term in office);

(G) Expulsion of a legislator or dismissal of a legislative employee;

(H) Payment or costs related to the investigation and adjudication of the charge; and

(I) Any other sanction fashioned to achieve the purposes of this act.

(b) If the person found to have violated this act is or was a member of the legislature, the commission's recommendations shall be forwarded by the chair of the LEC to the speaker of the house of the legislature to which the member belongs.

SECTION 10.

(a) The LEC may perform other acts, duties and functions authorized by or in connection with the administration of this act, consistent with the Uniform Administrative Procedures Act.

(b) Individuals subject to the provisions of this act shall not knowingly and improperly disclose any confidential information acquired in the course of official duties.

(c) The LEC may publicly respond to a statement or interpretation made concerning the contents of a decision it has issued or is purported to have issued.

SECTION 11. Tennessee Code Annotated, Section 4-29-228(a), is amended by adding the following language as a new, appropriately designated subdivision:

() Legislative Ethics Commission, created pursuant to this act;

SECTION 12. This act shall take effect July 1, 2005, the public welfare requiring it.